

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA**  
**CIVIL DIVISION**

**IN RE: PETITION OF COMMISSIONERS :**  
**OF CARBON COUNTY TO LAY OUT AND : No. 12-2115**  
**OPEN COUNTY ROAD, :**

Edward J. Hughes, Esquire &	
Daniel A. Miscavige, Esquire	Co-Counsel for Carbon County
Thomas S. Nanovic, Esquire	Counsel for Mahoning Township

**MEMORANDUM OPINION**

Matika, J. - March , 2013

On September 27, 2012, the Appellants, Commissioners of Carbon County (hereinafter "Carbon County"), filed a petition to "Lay Out and Open County Road" on a tract of land it owns that is primarily located in Mahoning Township (hereinafter "Township")<sup>1</sup> Carbon County. The roads that are of subject in this petition are situated in a proposed development known as "Packerton Business Park." In the petition, Carbon County had requested court approval to allow the County to take over an existing Township road known as Packerton Hollow Lane and lay it out pursuant to certain specifications it had proposed. This included relocating portions of Packerton Hollow Lane and

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<sup>1</sup> On October 17, 2012, Mahoning Township filed a petition for intervention arguing that if the Court was to approve Carbon County's petition, such result would affect the legally enforceable interest of the Township in having land owners comply with the Subdivision and Land Development Ordinance. The Court issued a Rule upon Carbon County, to which no response was filed. As a result, on November 19, 2012, this Court granted Mahoning Township's petition to intervene.

building it in such a way that the road would have a width narrower than that required by the Subdivision and Land Development Ordinance (hereinafter referred to as "SALDO") of Mahoning Township.

Additionally, Carbon County had requested court approval of its proposal to lay out and open an access road from State Route 902 into the development to be known as "Business Park Drive." The proposed construction of this access road did not comply with SALDO's requirements with respect to the installation, or under Carbon County's proposal, lack of installation of sidewalks.

The Court held a hearing on this matter on December 18, 2012, at which time testimony and evidence was presented from a number of witnesses on behalf of Carbon County and the Township. At the conclusion of the testimony, the Court entertained argument and legal memorandums from both parties, of which Carbon County's argument mirrored those set forth in its concise statement.

On January 15, 2013, this Court rendered its decision, via a memorandum opinion denying Carbon County's petition. In reaching such conclusion, the Court was guided by the case law applicable to the situation in determining that the County Code, and more specifically the County Road Law, does not preempt SALDO. Therefore, in order for Carbon County to lay out and

open the roads at issue, Carbon County must comply with the mandates of the Township's SALDO.

On February 6, 2013, Carbon County appealed this Court's decision denying its request for approval of the proposed roads. In its concise statement, Carbon County identifies what it believes to be errors in the Court's memorandum opinion. These alleged errors are as follows:

1. The Court erred in failing to give effect to the County Road Law, 16 P.S. § 2701 et seq., and specifically section 2713 that grants exclusive power to the Commissioners to locate, construct, and maintain sidewalks along county roads;
2. The Court erred in denying Carbon County's petition in concluding that a county road can only be approved if the county road complies with any affected municipality's land use ordinances, and specifically in this matter the Township's SALDO;
3. The Court erred in finding that there is a Township road that runs north and south through Carbon County's property known as Packerton Hollow Land and that the proposed county road is located entirely in Mahoning Township;

4. The Court erred in concluding that Carbon County has carte blanche as to how and whether county roads should be laid out and constructed;
5. The Court erred in failing to give effect to Section 103 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10103;
6. The Court erred in failing to give effect to Section 2401 of the Second Class Township Code, 53 P.S. § 67319;
7. The Court erred in the application of the doctrine of preemption; and
8. The Court erred in failing to conclude that the legislature determined that the County Road Law supersedes local land use regulations regarding county roads pursuant to the County Road Law and section 103 of the Municipalities Planning Code, 53 P.S. § 10101.

While numerous, the issues raised on appeal by Carbon County overlap in many respects, and as such this Court finds that such issues raised are sufficiently and adequately addressed in this Court's Memorandum Opinion. Accordingly, we have attached to this Opinion, for the convenience of the Commonwealth Court, our Opinion dated January 15, 2013,

explaining this Court's rationale for denying Carbon County's petition. This Court therefore submits to the Commonwealth Court that Carbon County's appeal is without merit and respectfully request that the Order of Court dated January 15, 2013, be affirmed accordingly.

**BY THE COURT:**

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**Joseph J. Matika, Judge**